

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

BARAONA, et al.,

Defendants.

No. 1:21-cv-01448-KES-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS DENYING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT

Docs. 71, 116

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on plaintiff's second amended complaint, Doc. 83, against: (1) defendants Baraona, Burnitzki, Leos, Hernandez, and Diaz for excessive force in violation of the Eighth Amendment; (2) defendant Leos for sexual assault in violation of the Eighth Amendment; and (3) defendants A. Ruiz, E. Ruiz, Meier, Gutierrez, Allison (Cronister), and T. Price for failure to protect in violation of the Eighth Amendment. The matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 21, 2025, the assigned magistrate judge issued findings and recommendations that plaintiff's motion for summary judgment, Doc. 71, be denied. Doc. 116. The findings and recommendations were served on the parties and contained notice that any objections must be filed within fourteen days after service. *Id.* Plaintiff timely filed objections

1 on March 6, 2025, and March 7, 2025, respectively. Docs. 117, 120. No other objections were
2 filed, and the time to do so has passed.

3 In his objections filed March 6, 2025, plaintiff contends that there is audio/video
4 surveillance from the incident that proves plaintiff's allegations. Doc. 117. In his objections filed
5 March 7, 2025, plaintiff reiterates his request for the Court to review body worn cameras and
6 audio/video surveillance. Doc. 120. Plaintiff's objections are unpersuasive. The audio and video
7 surveillance referenced by plaintiff, if it exists, was not presented to the Court on the motion for
8 summary judgment or otherwise during the pendency of this action, and therefore cannot be relied
9 upon to find summary judgment in plaintiff's favor. As discussed in the findings and
10 recommendations, the evidence relied upon in the motion for summary judgment offers
11 contradictory versions of the events at issue. Doc. 116 at 7–8. The Court may not assess the
12 credibility of witnesses or weigh the evidence on summary judgment. *See Soremekun v. Thrifty*
13 *Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). Such an assessment is for the trier of fact.¹

14 In accordance with the provisions of 28 U.S.C. § 636(b)(1), this Court has conducted a de
15 novo review of the case. Having carefully reviewed the file, the Court concludes that the findings
16 and recommendations are supported by the record and by proper analysis.

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27 ¹ Plaintiff's objections also request for attorney fees and legal supplies. The magistrate judge
28 already denied such a request made in a separate motion by plaintiff, filed March 6, 2025. Docs.
118, 119.

Accordingly, IT IS ORDERED that:

1. The findings and recommendations issued on February 21, 2025, Doc. 116, are ADOPTED IN FULL;
2. Plaintiff's motion for summary judgment, Doc. 71, is DENIED; and
3. This matter shall be set for a jury trial on plaintiff's claims against: (1) defendants Baraona, Burnitzki, Leos, Hernandez, and Diaz for excessive force in violation of the Eighth Amendment; (2) defendant Leos for sexual assault in violation of the Eighth Amendment; and (3) defendants A. Ruiz, E. Ruiz, Meier, Gutierrez, Allison (Cronister), and Price for failure to protect in violation of the Eighth Amendment.
4. This matter is referred back to the assigned magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: March 24, 2025


UNITED STATES DISTRICT JUDGE